STATE OF MICHIGAN

COURT OF APPEALS

PAM, INC.,

Plaintiff-Appellant,

v

TOWNSHIP OF ORION,

Defendant-Appellee.

UNPUBLISHED
May 27, 1997

No. 193779
Tax Tribunal
LC No. 00226476

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order dismissing its petition before the Michigan Tax Tribunal. We reverse and remand.

Plaintiff owns two parcels of commercial property in Orion Township, Oakland County. Plaintiff telephoned the township assessor on March 27, 1995, to determine the assessments for tax year 1995 when it did not receive written assessment notices in the mail. The assessor provided the requested information.

Plaintiff was dissatisfied with the assessments. The township's board of review had completed its sessions before plaintiff made the telephone call, so plaintiff was unable to protest the assessments to the board at that time. As a result, on June 23, 1995, plaintiff filed a petition directly with the Michigan Tax Tribunal.

Defendant moved to dismiss the petition in the Tax Tribunal, arguing that plaintiff had failed to protest the assessment at the board of review pursuant to MCL 205.735(1); MSA 7.650(35)(1). Plaintiff asserted that it was excused from compliance because the board of review had ceased meeting by the time plaintiff learned of its assessments. The Tax Tribunal found that the plaintiff learned of the assessment on March 27 (during the telephone call) and was required to file its claim within thirty-five days (actually, the statute allows only thirty days to file a claim).[1] Because the claim was filed beyond that period, the Tribunal reasoned, it was untimely and the Tribunal lacked jurisdiction to hear the claim.

The Tribunal did not rule on plaintiff's claim that it was excused from complying with the board of review procedure.

The tax statute contains two different filing deadlines. See MCL 205.735(2); MSA 7.650(35)(2). A petition in "assessment disputes" must be filed before June 30 of the tax year. "In all other matters" the petition must be filed within thirty days of the adverse final decision, ruling, determination, or order.

Plaintiff argues on appeal that the Tribunal erred by applying the thirty-day period. Instead, plaintiff argues, its claim was an assessment dispute subject to the June 30 deadline. Defendant argues that because plaintiff never contested the assessments before the township's board of review, plaintiff's claim cannot possibly be an assessment appeal subject to the June 30 filing deadline. The claim therefore must be one of those "all other matters" subject to the thirty-day filing deadline, defendant asserts. Plaintiff responds that its claim is indeed an assessment appeal, but that it could not be expected to protest the assessment at the board of review since it did not receive notice of the assessments until after the board of review had adjourned for the year.

At the outset, we disagree with defendant's attempt to characterize plaintiff's claim. Plaintiff is contesting the assessments, and therefore this is an assessment appeal. The fact that plaintiff did not conform with a prerequisite for an assessment appeal may affect whether that appeal may proceed, but it does not alter the nature of the claim.

As defendant argues, a taxpayer is required to protest an assessment to the local board of review before filing an assessment appeal with the Tax Tribunal.[2] A protest to the board of review is in the nature of a procedural prerequisite related to the exhaustion of administrative remedies, and not a jurisdictional requirement despite the statute's mention of "jurisdiction." *Parkview Memorial Ass'n v Livonia*, 183 Mich App 116, 121; 454 NW2d 169 (1990). When it is impossible for the taxpayer to protest an assessment at the board of review, a direct petition may be filed in the Tax Tribunal. For example, in *Parkview Memorial Ass'n* the city did not mail its notice of an increased assessment until two days after the board of review had adjourned for the year. Considering the impossibility of filing a protest at the local level, the Court ruled that the Tax Tribunal had jurisdiction over the taxpayer's claim. In *W&E Burnside, Inc v Bangor Twp*, 402 Mich 950*l* (1978), *reversing* 77 Mich App 618; 259 NW2d 160 (1977), the taxpayer did not receive notice of an increased assessment until after the board of review had met for the year. Again, jurisdiction was found despite the seeming procedural defect. Thus, while the statute imposes this procedural prerequisite, compliance may be excused — at least under certain narrow circumstances.

Plaintiff argues that it was impossible to file a protest with the local board of review because, like the taxpayer in *Parkview Memorial Ass'n*, it did not receive notice of the assessment until after the board had adjourned. Here we must disagree. Defendant offered evidence that it mailed notices on March 3, 1995. Plaintiff asserted that it did not receive the mailed notice. Defendant has not shown whether plaintiff actually received its notice; defendant only maintains that it sent a bulk mailing of 11,920 notices on a particular date, and that it would be consistent with its practice to mail a notice to taxpayers such as plaintiff. On remand, we leave plaintiff to its proofs on this issue.

Assuming arguendo that plaintiff's assertion regarding receipt of notice is true, the fact that it learned of the assessments after the board of review had adjourned is not dispositive. The statute requires the local unit of government to send notice of any *increase* in assessments. MCL 211.24c(1); MSA 7.24(3)(1). The statute does not require the governmental unit to send notice if the assessment is unchanged from the prior year. Plaintiff argued below that the township was required to send notices to all property owners because Bulletin No. 14 from the State Tax Commission *recommended* such a mailing to assure that all property owners received notice of new provisions of the tax code. The State Tax Commission's mere *recommendation* does not alter the clear dictates of the statute. The township's decision to send notices to all property owners, even those whose assessments had not increased, was a matter of courtesy, not legal right.

The board of review may consider the protest of any "person whose property is assessed on the assessment roll." There is no requirement that the assessment be increased. MCL 211.30; MSA 7.30. Every owner of land is charged with knowledge that their property will be taxed annually, even if they do not receive actual notice. *Caplan v Jerome*, 314 Mich 198; 22 NW2d 270 (1946); *Fisher v Muller*, 53 Mich App 110, 125; 218 NW2d 821 (1974). Thus, we reject plaintiff's contention that it would be unconstitutionally deprived of all opportunity to challenge the assessment if this petition is not allowed.

The Tax Tribunal did not address the parties' arguments regarding whether plaintiff is excused under all the circumstances from complying with the procedural prerequisites to filing an assessment dispute. We do conclude, however, that failure to receive actual notice of an unchanged assessment before the board of review has adjourned does not, standing alone, make compliance impossible. Whether plaintiff may show that compliance is excused for other reasons is an unanswered question.

Therefore, we reverse the Tribunal's order dismissing the petition because it was untimely, and remand the matter for further proceedings. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

[1] "In all other matters, the jurisdiction of the Tribunal is invoked by a party in interest, as petitioner filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review." MCL 205.735(2); MSA 7.650(35)(2).

[2] Section 35(1) provides in part that "For an assessment dispute as the valuation of the property or where an exemption is claimed . . . the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute . . . ."